

## § 246.8

## 24 CFR Ch. II (4–1–10 Edition)

### **§ 246.8 Materials to be submitted to HUD in support of preemption request.**

(a) After posting or delivery of the Notice as required by § 246.7, the mortgagor shall immediately send HUD notification of its intention to file a preemption request, to include:

(1) The written Notice to the tenants, which will state the date of its posting and distribution.

(2) An annual Statement of Profit and Loss, on a form prescribed by the Commissioner, audited by an independent public accountant and covering the most recently ended accounting year, and if more than four months have elapsed since the date of the Profit and Loss Statement, an unaudited accrual Profit and Loss Statement on a form prescribed by the Commissioner for the intervening period since the date of the annual statement, with the mortgagor's certification as to its accuracy.

(3) A certified statement which provides a separate breakdown for the percentage of vacancies for the present and previous year.

(4) A certified statement which provides a separate breakdown of the actual rent loss due to nonpayment of rent for the past 2 years.

(5) A certified statement which provides a separate breakdown of rent loss due to tenant turnover for the past 2 years.

(6) A certified statement covering known approved rate or cost increases not yet experienced by the project which can be documented by the following:

- (i) Tax rates or appraisals,
- (ii) Utility rates,
- (iii) Contracts for employees or services,
- (iv) Insurance, and

(7) A certified statement covering known decreases of rates or costs not yet experienced by the project which have been approved and can be documented as follows:

- (i) Tax rates or appraisals,
- (ii) Utility rates,
- (iii) Contracts for employees or services,
- (iv) Insurance.

If there are none, the mortgagor must so certify.

(8) A copy of the full application to the board with supporting documentation.

(b) The local HUD office shall review the mortgagor's submission promptly upon receipt, to ascertain that it is complete as required by paragraph (a) of this section. Should the submission be found to be incomplete, the local HUD office shall notify the mortgagor within 48 hours of the review of its determination that further material is necessary to constitute a complete submission as defined in paragraph (a) of this section.

(c) When the submission is complete, the HUD office shall hold the mortgagor's submission as specified in paragraph (a) of this section in abeyance until a preemption request is received pursuant to § 246.9.

(d) If the mortgagor subsequently re-submits any change to the submission as described in paragraphs (a) (1) through (7) of this section, it will be required to provide the tenants with an additional 30 days to comment.

### **§ 246.9 Request for preemption.**

(a) Upon expiration of the period for tenant comments required by this rule and after review of the comments submitted to it, the mortgagor may submit its request for preemption. That request must include the following:

(1) A certification by the mortgagor following the requirements specified in paragraph (b) of this section;

(2) Copies of all written comments submitted by the tenants to the mortgagor;

(3) The mortgagor's evaluation of the tenant's comments with respect to the request; and

(4) The board's decision or a statement from the mortgagor certifying that a decision from the board has not been received.

(b) The certification of the mortgagor as required by paragraph (a)(1) of this section shall include the following:

(1) That the Notice required by § 246.7 was given pursuant to the provisions of that section;

(2) That the mortgagor has taken reasonable steps to assure that the substance of the Notice has been conveyed to each resident household, and that the mortgagor exercised its best efforts

to assure that the posted Notices were maintained intact and in legible form for the specified thirty (30) days;

(3) That: (i) The copies of the materials submitted in support of the preemption request were located in a place reasonably convenient to tenants in the project during normal business hours and at least one evening a week after business hours, and (ii) that requests by tenants to inspect such materials, as provided for in the Notice, were honored;

(4) That copies of all comments received from the tenants were considered and are being transmitted to HUD together with the certifications; and

(5) A statement that “under the penalties and provisions of title 18 U.S.C., section 1001, the statements contained in this application and its attachments have been examined by me and, to the best of my knowledge and belief, are true, correct, and complete.”

(c) Should the mortgagor receive a delayed decision from the board after filing its preemption request, HUD shall be informed immediately and furnished with a copy of the board’s decision.

#### **§ 246.10 HUD procedures.**

(a) The local HUD office will review the information submitted by the mortgagor together with the decision of the board, if any. The local HUD office will, if it finds that the delay or decision of the board fails to provide adequate residential income to protect the Department’s economic interest in the projects and the board will not modify its position to the satisfaction of the local HUD office, make a report with appropriate recommendations concerning the actions that should be taken by HUD to the Office of Multifamily Housing Management and Occupancy, Headquarters. The report shall be sent to the Office of Multifamily Housing Management and Occupancy, Headquarters, and shall include appropriate recommendations concerning the action that should be taken by HUD.

(b) The Office of Multifamily Housing Management and Occupancy will review the report and will consider whether to preempt the board’s regulation. If it finds that the income level

permitted by the board is inadequate to maintain the project as described in § 246.5, it shall issue a formal certification to the board that its authority has been preempted as to such rents. Copies of the certification shall be transmitted to the mortgagor, the local HUD office, and the board.

#### **§ 246.11 Notification of action on preemption request.**

(a) After HUD has considered the preemption request which meets the requirements of § 246.9 and has made its determination to approve or disapprove the request, it will furnish the mortgagor with a written statement of the reasons for approval or disapproval. The mortgagor shall make known to tenants, by posting or delivery in the manner outlined in § 246.7, the reasons for approval or disapproval.

(b) The mortgagor may effect collection of the HUD-approved income level which is set at the time of the preemption determination after the expiration of 30-days notice to the tenants, subject to the terms and rights a tenant may have under the existing lease.

(c) Once the project reaches the income level approved under these procedures, the project will be returned to the control of the local rent control board covering both the rents and the terms of prospective leases.

#### **§ 246.12 Preemption of prospective term of lease.**

(a) In those instances where it will take more than 60 days (2 months) for the project to reach the new income levels, HUD preemption of prospective lease terms shall be effective for those new or renewed leases which by regulation of a local rent control board would require the mortgagor to offer a lease for a term in excess of one year.

(b) As a condition for HUD preemption, the mortgagor must give only one-year leases to tenants whose leases expire during the preemption period.

### **Subpart C—Subsidized Insured Projects**

#### **§ 246.20 Applicability.**

This subpart applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of: